TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~705~~ 435

J. M. HUTCHINGS, PLAINTIFF IN ERROR,

vs.

F. F. LOW, H. W. CLEVELAND, J. D. WHITNEY, WILLIAM ASHBURNER, J. W. RAYMOND, E. S. HOLDEN, ALEXANDER DEERING, GEORGE W. COULTER, AND GALEN W. CLARK, COMMISSIONERS, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 12, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 705.

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vs.

F. F. LOW, H. W. CLEVELAND, J. D. WHITNEY, WILLIAM ASHBURNER, J. W. RAYMOND, E. S. HOLDEN, ALEXANDER DEERING, GEORGE W. COULTER, AND GALEN W. CLARK, COMMISSIONERS, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of California, United States of America, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between J. M. Hutchings, plaintiff in error, and F. F. Low, Henry W. Cleaveland, J. D. Whitney, William Ashburner, J. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen W. Clark, commissioners, &c., a manifest error hath happened, as is alleged, to the great damage of the said J. M. Hutchings, plaintiff in error, as by his complaint appears; and, it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, in the District of Columbia, on the first Monday of December next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 29 day of September, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

[SEAL.]

L. S. B. SAWYER,
Clerk U. S. Cir. C't, &c.

The above writ of error is hereby allowed.

STEPHEN J. FIELD,
Associate Justice of U. S. Supreme Court.

(Indorsed:) 2723. United States Supreme Court. J. M. Hutchings, pl'ff in error, vs. F. F. Low et al., def'ts in error. Writ of error. Filed June 24th, 1872. Grant J. Taggart, clerk.

2 Supreme court of the State of California.

TRANSCRIPT ON APPEAL.

Filed Dec'r 19th, 1870.

GEO. SECKEL, *Clerk*,
By B. A. MARDIS, *Dep'ty.*

In the district court of the 13th judicial district in and for the county of Mariposa.

FREDERICK F. LOW, GOVERNOR; HENRY W. Cleaveland, professor; J. D. Whitney, William Ashburner, J. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen W. Clark, constituting and known in law as "The commissioners to manage the Yo-Semite Valley and the Mariposa Big-Tree Grove," plaintiffs,

vs.

J. M. HUTCHINGS, DEFENDANT.

Complaint.

COUNTY OF MERIPOSA, *ss:*

The said plaintiffs complain of the said defendant, J. M. Hutchings, and for cause of complaint aver and show:

I. That the plaintiffs are a board of commissioners created by and under the provisions of an act of Congress entitled "An act authorizing a grant to the State of California of the Yo-Semite Valley and of the land embracing the Meriposa Big-Tree Grove," approved June 13th, A. D. 1864, and the act of this State entitled "An act to accept the grant by the United States Government to the State of California of the Yo-Semite Valley and of the land embracing the Meriposa Big-Tree Grove, and to organize the board of commissioners, and to fully empower them to carry out the objects of the grant, and to fulfill the purposes of the trust," approved April 2d, 1866, organized pursuant to the last-named act, and by the same authorized to sue in the name of the commissioners to manage the Yo-Semite Valley and the Meriposa Big-Tree Grove," and are clothed in full power to manage and administer the grant made and the trust created by the aforesaid act of Congress.

II. That, on the 1st day of July, A. D. 1867, the State of California was the owner in fee, and these plaintiffs were lawfully possessed, in their said capacity as commissioners, of the following-described premises, being a part of the lands included in said grant, viz: All that piece or parcel of land, with all the improvements thereon erected, situate in the State of California, county of Meriposa, and in that portion thereof known as Yo-Semite Valley, and comprising a part thereof, and particularly described as follows: Commencing at the point in said valley on the south bank of the Merced River, where the bridge is built across said river, nearly opposite a house known as Hutchings' Hotel; thence from said point, formed by the intersection of said south bank and the west line of said bridge, north 43° east, thirty links, along the southerly bank of said river to the east line of said bridge; thence across said bridge on the east line thereof north 1° east, two chains; thence south 78¼° east, four chains; thence north 43¾° east, four chains; thence north 23½° east, three chains; thence north 76¾° east, five chains; thence south 48° east, four chains; thence south 11¼° east, seven chains twenty-three links; thence south 77° east, six chains; thence north 44½° east, three chains; thence north 14° east, four chains; thence south 82½° east, ten chains; thence north 32½° east, one chain sixty links; thence north 15° west, twenty-three chains thirty links; thence south 36¼° west, three chains; thence north 76° west, twelve chains; thence south 78¼ west, ten chains; thence north 56¼° west, twelve chains sixty-five links; thence north 87¾ west, thirteen chains; thence south 40° east, seven chains; thence south 37° west, four chains; thence south four degrees (4°) east, six chains; thence south 16¼° east, twenty-seven chains; thence north 23¾° east, five chains; thence north 43° east, five chains sixty-five links, to the place of beginning; and known as Hutching's claim.

III. That, being so possessed and entitled to the possession thereof, the defendant, afterwards, viz, on the second day of July, A. D. 1867, wrongfully and unlawfully entered into said premises, and ousted and ejected these plaintiffs therefrom, and ever since said day has, and now does unlawfully withhold from said plaintiffs the possession thereof, to their damage in the sum of $500 (five hundred dollars.)

Wherefore plaintiffs pray judgment against said defendant for the restitution of said land and premises, and for the sum of five hundred dollars damages for the withholding thereof, together with costs.

Nov., 1867.

J. G. McCULLOUGH,
Att'y for Pl'ffs and Att'y Gen'l.

Filed Nov. 29th, 1867.

A. REYNOLDS, *Clerk.*
J. C. HAMILTON,
Deputy Clerk.

7 (Title of court and cause.

Summons.)

Action brought in the district court of the thirteenth judicial district of the State of California in and for the county of Meriposa, and the complaint filed in said county of Meriposa in the office of the clerk of said district court.

The people of the State of California send greeting to J. M. Hutchings, defendant:

You are hereby required to appear in an action brought against you, by the above-named plaintiffs, in the district court of the thirteenth judicial district of the State of California, in and for the said county of Meriposa, and to answer to the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this
8 summons, if served within this county, or, if served out of this county, but in this district, within twenty days; otherwise within forty days; or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to obtain restitution of certain landed estate and premises now in possession of defendant, and wrongfully detained by him, as more fully set forth in plaintiff's complaint, together with five hundred dollars damages and costs of suit.

And you are hereby notified that, if you fail to appear and answer the said complaint, as above required, the said plaintiffs will take judgment for the relief demanded in complaint, and five hundred dollars damages and costs of suit.

Given under my hand, and the seal of the district court of the thirteenth judicial district of the State of California, in and for the said county of Meriposa, this 29th day of November in the year of our
9 Lord one thousand eight hundred and sixty-seven.

[SEAL.] ANGEVINE REYNOLDS, *Clerk.*
By J. C. HAMILTON, *Deputy Clerk.*

J. G. McCULLOUGH,
Plaintiff's Attorney.

Sheriff's return.

OFFICE OF THE SHERIFF OF THE COUNTY OF MERIPOSA, *ss:*

I hereby certify that I received the within summons on the 29th day of November A. D. 1867, and personally served the same on the fifth day of December A. D. 1867, on J. M. Hutchings, being the defendant named in the summons, by delivering to J. M. Hutchings, said defendant, personally in the said county of Meriposa a certified copy of

the complaint in the action named in said summons, attached to said copy of summons.

Dated this fifth day of December A. D. 1867.

J. D. CRIPPEN,
Sheriff M. Co.

10 Sheriff's fees: cop. sum. $2.00; 5 folio 2.00—$4.00.

Filed December 6th, 1867.

A. REYNOLDS, *Clerk.*
By J. C. HAMILTON, *Deputy Clerk.*

(Title of court and cause.)

Answer.

Now comes J. M. Hutchings, the above-named defendant, and for answer to the complaint in the above-entitled action avers and shows to this court:

That the defendant denies each and every allegation in plaintiff's complaint contained not hereinafter specially admitted. And, further answering, defendant affirmatively alleges that he is now and hath been continuously since the month of May, 1864, the owner and in the actual peaceable and lawful possession of the premises mentioned and
11 described in the plaintiff's complaint in this action.

And defendant further avers affirmatively and shows to the court:

That defendant entered upon the premises, described in plaintiff's complaint on *on* the day of May, 1864, with the bona fide intention of claiming, occupying, residing upon, improving, and pre-empting the same under and in accordance with the laws of the United States relating to the public lands of the United States, and with the view and bona *fied* intention to acquire a patent to said premises under and by virtue of the pre-emption laws of the United States and through the compliance of defendant with said laws.

That at the time of defendant's entry as aforesaid, the said premises were unsurveyed public lands of the United States and were not included in any reservation by any treaty, law, or proclamation of the President of the United States, or by any other means or author-
12 ity, nor reserved for salines or other purposes; nor reserved to the United States as alternate sections of lands granted to States for public improvements, and were not reserved for the support of schools, nor for any purpose, nor in any way, and were not mineral lands, and were not included, and were not sections nor fractions of sections included, within the limits of any incorporated town, and were not selected as the site for a city or town, nor settled, nor occupied for purposes of trade, and did not contain any known salines or mines; but on the contrary were by law subject to be claimed, occupied, and settled under the pre-emption laws of the United States, with a view to pre-empting the same and acquiring a patent thereto.

The defendant at the time of his said entry was a citizen of the United States, over the age of twenty-one years, and was the head of a family, and had never borne arms against the United States, nor given aid and comfort to its enemies, and was not the owner of three
13 hundred and twenty acres of land in any State or Territory of the United States, and had no other pre-emption claim, and had not abandoned his residence on his own land to reside on the public land in the same State or Territory, and possessed all the qualifications of a pre-emption settler under the laws of the United States.

That, at the time of said entry of defendant, there was upon said premises a dwelling-house which had been previously erected by a private person, and defendant then and there acquired, by purchase, all private claims to said dwelling-house and to said premises, and all appurtenances thereto; and from the time of said entry the defendant has occupied said dwelling-house and said premises with his family, and has been with his family in the actual, exclusive, continuous, and peaceable possession of the same, and of every part thereof, till the commencement of this action, inhabiting and improving the same, and using
14 the same for agricultural purposes, as well as for other purposes, and expending much labor and large sums of money in substantial improvements thereon; and from the date of said entry of defendant to the commencement of this action, defendant has made substantial and important additions to the improvements on said dwelling-house; has erected numerous farm-buildings, corrals, and fences upon said premises; has constructed a substantial bridge across the Merced River, and another on Yo-Semite Creek, on said premises, reclaimed, at great labor and cost, the land filled with old scrubby roots; planted an orchard of about two hundred choice fruit trees, now nearly in bearing condition, and one-half an acre of strawberry plants, besides raspberry, lawton blackberry, gooseberry, currant, and grape plants, all on said premises. And defendant avers that he so inhabited, cultivated, and improved said premises as aforesaid, relying upon the pre-emption laws of the United States for his protection, and expecting
15 and intending to obtain a patent to said premises under and by compliance with said pre-exemption laws, and that said premises do not comprise more than one hundred and sixty acres.

That said premises are lands that have never been surveyed by the United States, and no plot thereof has been returned to or filed in any land-office of the United States, by reason whereof defendant has been and is unable to take any further or other steps to declare his claim, or perfect his title to said premises than the acts and proceedings hereinbefore mentioned; but defendant has been at all times willing and ready, and is still willing and ready, to pay to the United States, or its agents, the price of said premises, and all legal fees and costs, or to deposit with the United States, its agents, or any person authorized to receive the same, such price, and all lawful fees, costs and charges, and ever has been and is willing and ready to comply with all the requirements
16 and conditions of the laws and regulations of the United States relating to public lands thereof, and to pre-exemption claims upon the same, and only awaits a lawful opportunity to file his claim to said premises and to pay the price thereof, and all fees, costs, and charges.

For further and seperate answer to the plaintiff's complaint defendant avers that heretofore, to wit, on the 20th day of February, A. D. 1868, during the session of the legislature of the State of California, an act of the legislature of said State was passed by said legislature, entitled an act granting certain lands in Yo-Semite Valley to J. M. Hutchings and J. C. Lamon, which said act of the legislature, defendant avers, became a law of the State of California on the said 20th day of February, A. D. 1868, and is in words and figures as follows, to wit:

"An act granting certain lands in Yo-Semite Valley to J. M. Hutchings and J. C. Lamon.

17 "*The people of the State of California represented in senate and assembly do enact as follows:*

"SECTION 1. There is hereby granted to J. M. Hutchings and J. C. La-

mon from the lands of the State in Yo-Semite Valley, Mariposa County, one hundred and sixty acres of land each, to be taken in such shape and form as to include the lands occupied and improved by them or those under whom they hold prior to the thirtieth day of June, eighteen hundred and sixty four, the boundaries to be established at the cost of the said Hutchings and Lamon by the surveyor general of the State of California, within twelve months from the passage of this act, whose official plats, when affirmed by the governor of the State of California, shall constitute the evidence of the limits and lines of the said granted premises.

"This is granted upon the condition that the State, through the board of Yo-Semite commissioners shall have the power at any time to lay out, construct, and maintain such roads, bridges, paths, and
18 avenues upon and through the said lands as may be necessary for the convenience of the public and visitors to said valley.

"SECTION 2. This act shall take effect and be in force from and after its ratification by the Congress of the United States."

The defendant avers that the above act of the legislature of the State of California has since its passage been duly and legally presented to the Congress of the United States for ratification; and that the subject of the ratification of the said act of the legislature is now pending and undetermined in said Congress of the United States.

Defendant avers that, within twelve months from the passage of the act of the legislature of the State of California hereinbefore refer'ed to, the defendant caused a survey to be made by the surveyor-general of the State of California, of one hundred and sixty acres of land lying and being in the Yo-Semite Valley in Mariposa County, which
19 said survey defendant avers was made at defendant's own cost, and in such shape and form as to include the lands occupied and improved by defendant and those under whom he holds prior to the 30th day of June, A. D. 1864. Defendent avers that said surveyor-general of the State of California afterwards made and executed official plats of the land so surveyed by the said surveyor-general of the State of California for the defendant, under and by virtue of the act of the legislature of the State of California entitled, an act granting certain lands in Yo-Semite Valley to J. M. Hutchings and J. C. Lamon, and hereinbefore referred to, which plats defendant avers was afterwards affirmed by the governor of the State of California.

Defendant avers that the land and premises so surveyed by said surveyor general, situated and lying in the Yosemite Valley, for the defendant, under and by virtue of the act of the legislature of the
19 State of California, entitled "An act granting certain lands in Yo-Semite Valley to J. M. Hutchings and J. C. Lamon," passed February 20th, 1868, and of which official plats have been made by said surveyor-general, and approved by the governor of the State of California, the defendant avers to be the same land mentioned and described in plaintiff's complaint in this action.

The defendant avers that the premises described in plaintiff's complaint is the identical land intended to be conveyed and granted to the defendant by the said act of the legislature of the State of California, passed February 20th, 1868, and entitled "An act granting certain lands in Yo-Semite Valley to J. M. Hutchings and J. C. Lamon," hereinbefore referrred to.

Defendant also avers that he is now, and ever hath been, ready and willing to grant and admit the absolute right of the said State of California, upon the request of her agents, the board of Yo-Semite

21 commissioners, to permit said State, when she or her duly-authorized agents thought proper, to enter upon the land mentioned and described in the complaint and answer in this action, and lay out, construct, and maintain such roads, bridges, paths, and avenues upon and through said lands whenever in the opinion of said board of Yo-Semite commissioners, the' might deem it necessary for the convenience of the public and visitors to the valley.

Wherefore the defendant prays that plaintiffs' action be dismissed, and that the defendant be adjudged to be the owner of the property described in said complaint, and that plaintiffs be forever barred from prosecuting this action further; and for such other and further relief as this court shall deem just, equitable, and proper.

L. F. JONES & J. B. CAMPBELL,
Attorneys for Defendant.

Filed October 4th, 1869.

A. REYNOLDS, *Clerk.*

22 (Title of court and cause.)

Amendments to answer.

Said defendant, by leave of the court first had and duly entered, amends his answer herein by inserting in said answer, in page thirteen and after the third line thereof, and after the words in said third line, "and visitors to the valley," the following words, to wit: "And defendant further avers that, at the time of the passage of the act of the legislature of California, of February 20th, 1868, aforesaid, and at the time said act became a law, said legislature was fully informed of the nature of the title of said State of California, and of the nature of the claim of the defendant to the premises described and sued for, and was fully informed that defendant was then and long had been in the actual possession of said premises.

"And defendant further avers that, since the passage of said
23 act as aforesaid, and since the same became a law as aforesaid, the legislature of said State of California has been again convened, and has been in session from the day of December, 1869, to the day of April, 1870, and that said legislature was fully informed in regard to the passage of the act aforesaid, and in regard to its existance as an operative law of said State, and in regard to defendant's claims to said premises sued for, and to defendant's reliance upon said act of legislature for the security of his said claims, and was fully informed that the Congress of the United States had not acted definitively in regard to said act of said legislature as by said act provided; and that said legislature, at said last-mentioned session, being fully informed as aforesaid, did not revoke, annul, or in any way modify or withdraw the terms of said act of legislature, and have not to this day revoked, annulled, or in any way modified or withdrawn the terms thereof.

24 "And defendant further avers that, relying upon the good faith of the State of California to carry out the true and understood force and effect of the act of legislature aforesaid, and induced thereto by said act of said legislature, the defendant has continued to occupy and possess, and reside upon with his family the said premises sued for, and has made valuable improvements upon the same in buildings and fences, to wit, of the value of $2,000, and has expended valuable time in the care and improvement of said premises, and in efforts to move the U. S. Congress to take final action on said act of legislature

of California, and that if now ejected therefrom said time and said expenditures will be totally lost to defendant, to his great damage.

"October 5th, 1870.

"L. F. JONES,
"J. B. CAMPBELL,
"*Attorneys for Def't.*"

Filed October 5th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

25 (Title of court and cause.)

Exception A.

Be it remembered that, on the trial of this case, on this 11th day of November, A. D. 1870, at a regular term of court, the parties appeared by their counsel, and the plaintiffs moved for judgment upon the pleadings against defendant, on the ground that the answer of the defendant admitted the facts of the complaint, and set forth no defense to the same, which said motion was opposed by defendant's counsel, and denied by the court; to all of which the plaintiffs then and there duly excepted in open court.

November 11th, 1870.

A. C. BRADFORD,
District Judge.

Filed November 11th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

26 (Title of court and cause.)

Findings.

This cause came on regularly for trial, Alex. Deering, attorney, appearing for the plaintiffs, and L. F. Jones and J. B. Campbell, attorneys' appearing for the defendant. The case being submitted to the court after the evidence introduced, and argument of counsels, the court finds the following facts:

1. That, on the 19th day of May, 1864, the lands in controversy were, and ever since have been, unsurveyed public lands of the United States, and were open to pre-emption under the pre-emption laws of the United States.

2. That, on the 19th day of May, 1864, J. M. Hutchings, the defendant, entered and settled upon said lands with his family, stock and agricultural implíments, with intent to occupy, live upon, cultivate,
27 and improve the same as a pre-emption, and at the time of said entry there were upon said lands a house, and out-houses, and a fence enclosing about three acres, all of which improvements the defendant had previously purchased from the previous owners.

3. That afterwards Congress passed an act, approved June 30th, 1864, entitled "An act authorizing a grant to the State of California of the Yo-Semite Valley and of the land embracing the Meriposa Big-Tree Grove," and that the lands in controversy were a part of the lands granted by said act.

4. That the legislature of the State of California, by act of April, 1866, accepted such grant, and appointed the plaintiffs commissioners, as in the act of Congress provided.

5. That afterwards the legislature of the State of California passed

an act, which became a law on the 20th day of February, 1868, which last-mentioned act is in the words and figures following, to wit:

"An act granting certain lands in Yo-Semite Valley to J. M.
28 Hutchings and J. C. Lamon.

"*The people of the State of California represented in senate and assembly do enact as follows:*

"SECTION 1. There is hereby granted to J. M. Hutchings and J. C. Lamon from the lands of the State in Yo-Semite Valley, Mariposa County, one hundred and sixty acres of land each, to be taken in such shape and form as to include the lands occupied and improved by them or those under whom they hold prior to the thirtieth day of June, eighteen hundred and sixty-four, the boundaries to be established at the cost of the said J. M. Hutchings and J. C. Lamon, by the surveyor general of the State of California, within twelve months from the passage of this act, whose official plats, when affirmed by the governor of the State of California shall constitute the evidence of the limits and lines of the said granted premises. This grant is upon the condition that the State, through the board of Yo-Semite commissioners, shall have the power, at any time, to lay out, construct, and maintain such roads, bridges,
29 paths, and avenues upon and through the said land as may be found necessary for the convenience of the public and visitors of the said valley.

"SECTION 2. This act shall take effect and be in force from and after its ratification thereof by the Congress of the United States."

6. That the land granted to J. M. Hutchings by the act last-mentioned comprises the land in controversy, and the J. M. Hutchings therein named is the defendant herein; and that, within twelve months from the passage of said act, the defendant, at his own cost, did cause said granted lands to be surveyed and the boundaries thereof to be established by the surveyor-general of the State of California, and whose official plats thereof were affirmed by the governor of the State of California.

7. That after the act last mentioned became a law, and during the same session of said legislature of the State of California, the said legislature duly adopted and published the following concurrent res-
30 olutions and memorial to Congress, to wit:

"Concurrent resolutions and memorial to Congress, on the claims of J. M. Hutchings and J. C. Lamon.

"The memorial of the legislature of the State of California respectfully representeth:

"That, whereas the Government of the United States did, by act of Congress, approved June thirtieth, eighteen hundred and sixty-four, (United States Statutes at Large, volume XIII, page 325,) cede to the State of California the 'cleft' or 'gorge' known as the 'Yo-Semite Valley,' in Mariposa County, California:

And whereas long prior to said cession, J. M. Hutchings and J. C. Lamon had in good faith settled in said valley, with the intention of claiming one hundred and sixty acres each of the public domain under the pre-emption laws of the United States, as soon as the said land should be subject to entry; and they being the only settlers therein:

31 "And whereas the said Hutchings and Lamon have resided and

been in possession and made permanent and substantial improvements thereon, to the great convenience and comfort of visitors to said valley, without which the same would be remote and solitary wilderness:

"And whereas the said Hutchings and Lamon would unquestionably have been entitled to their pre-emption claims in said valley, had the land remained public domain; and that the State, having succeeded to the rights of the Federal Government, by gift, in the said valley, cannot afford to be less generous:

"And whereas it would be improper for the State to erect and keep hotels or other stopping-places in said valley, and that a ten years' lease, as contemplated in the act of cession, is wholly inadequate to induce private capital to do so:

"And whereas, in view of the premises, and an act of simple justice to said Hutchings and Lamon, the legislature of the State of California did, by an act which became a law February twentieth, eighteen hundred and sixty-eight, grant to the parties aforesaid the same amount of land they would have been entitled to under the general pre-emption laws, to wit, one hundred and sixty acres each: Therefore be it

32 "*Resolved, by the senate, the assembly concurring*, That our Senators in Congress be instructed, and our Representatives requested to use all fair and honorable means to procure the passage of an act of Congress, ratifying and confirming the said act of the legislature in the premises.

"*Resolved*, That his excellency the governor be requested to transmit, without delay, a copy of the foregoing memorial, together with a copy of the said act of the legislature, to each of our Senators and Representatives in Congress."

8. That defendant at the time of his entry and settlement upon said land was *was* and ever since hath been a citizen of the United States, and was over twenty-one years of age and the head of a family, and had never borne arms against the United States, nor given aid and comfort to its enemies, and was not the owner of three hundred and twenty

33 acres of land in any State or Territory of the United States, and had no other pre-emption claim, and had not abandoned his residence on his own land to reside on public land in the same State or Territory, and possessed all the qualifications of a pre-emption settler under the laws of the United States, and from the time of said entry and settlement to the commencement of this suit, was in the continuous and peaceable possession of the said land, living on it with his family, and building upon, and improveing and cultivating the same for agricultural and grazing purposes, with intent to pre-empt said land.

9. That from the time of defendant's said entry and settlement, and at and after the time of the passage of the act of legislature of California last mentioned, and resolutions and memorial of said legislature before mentioned, defendant has, in good faith believed that he had a right, as a pre-emptioner, to the continued possession and use of the

34 land in controversy, until he could be enabled and permitted to file his declaratory statement, prove up his settlement and right, and pay for said land under and according to the pre-emption laws of the United States; and that he had a prior right before any other vendee or donee of the United States to acquire title to the said lands, and the natural and intended effect of said last-mentioned act of the legislature, and of said resolutions and memorial, was to confirm defendant in such belief and to lead him to believe, and actuually did lead him to believe, that the State of California would not, by her agents or commissioners,

or otherwise, interfere with defendant's possessions, until final action by Congress, and that said act and resolutions and memorial were me'nt to lead and did lead defendant to believe that he might safely expend his money, time, and labor in having said land surveyed, and in building upon, reclaiming, and improving the same, and in endeavoring to secure the final action of Congress upon said act; and, acting in good faith on his said belief, the defendant was led by the said act of legislature last mentioned, and by the resolutions and memorial aforesaid, to expend more than eleven hundred dollars in proper efforts to move the Congress of the United States to take final action upon the said act of legislature last mentioned, and to expend large sums of money, and much time and labor in having the lands in controversy surveyed by the surveyor-general of the State of California, and in making many valuable improvements thereon.

10. That it would operate as great and irreparable injury to defendant to be ejected from the lands in controversy before the final action of Congress upon the act of legislature last mentioned.

As conclusions of law, the court finds that the defendant is entitled to judgment.

The case of Hutton vs. Frisbie, in 37 Cal. Reports, and other' cited by plaintiffs' attorney, I do not consider in point—and I further decide that when a pre-emptioner enters upon the unsurveyed public lands under the sanction of a public law, and makes improvements, and becomes a bona-fide settler, he acquires such rights as the Government cannot divest or take from him.

A. C. BRADFORD,
District Judge.

Filed November 12th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

(Title of court and cause.)

Judgment.

This cause came regularly on to be heard in the above-entitled court, on the eleventh day of November, A. D. 1870, before the court, setting without a jury, and the plaintiffs appearing by their attorney, Alex. Deering, esq., and the defendant, by his attorneys, L. F. Jones and J. B. Campbell, and plaintiffs and defendant introduced evidence in their behalf respectively, and, after argument of respective counsel, this cause was submitted to the court for decision; and, after due deliberation, the court renders it' judgment: Wherefore, by reason of the premises and the law, the court orders, adjudges, and decrees that the plaintiffs in this action take nothing; and that defendant have judgment against the plaintiffs for their costs, taxed dollars.

A. C. BRADFORD,
District Judge.

Filed November 12th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

(Title of court and cause.)

Notice of appeal.

You will please take notice that the plaintiffs in the above-entitled cause, appeal to the supreme court of the State of California, from the

judgment made and rendered against them, and in favor of the said defendant, by the aforesaid district court in [the] said case, on the 12th day of November, A. D. 1870, and from the whole thereof.

ALEX. DEERING,
Attorney for Plaintiffs.

38 To L. F. JONES and J. B. CAMPBELL,
Attorneys for Defendant.

Due service of a copy of the foregoing notice of appeal admitted this 29th day of Nov., 1870.

J. B. CAMPBELL,
Att'y for Defendant.

Filed November 29th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

(Title of court and cause.)

Appeal bond.

Whereas the plaintiffs in the above-entitled action have appealed to the supreme court of the State of California, from the judgment of the said district court, made and entered in said case on the 12th day of November, A. D. 1870, which said judgment was against the plaintiffs and in favor of the defendant, for his costs:

Now, therefore, we, David Egenhoff and John Higmen, of Me-
39 riposa, Meriposa County, California, do hereby, jointly and severally, undertake and promise, on the part of the appellants, that the said appellants shall pay all damages and costs which may be awarded against them on the appeal, not exceeding three hundred dollars, to which amount we acknowledge ourselves bound.

DAVID EGENHOFF. [L. S.]
JOHN HIGMAN. [L. S.]

STATE OF CALIFORNIA,
County of Meriposa, ss:

David Egenhoff and John Hingman, being duly sworn, depose and say that they are the individuals who executed the foregoing undertaking as sureties thereto, and each for himself says that he is worth the amount therein specified as the penelty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution.

DAVID EGENHOFF.
JOHN HIGMAN.

40 Subscribed and sworn to before me, Nov. 29th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

Filed November 29th, 1870.

ANGEVINE REYNOLDS, *Clerk.*

(Title of court and cause.)

I, Angevine Reynolds, clerk of the county and State above-named, and ex-officio clerk of the aforesaid district court, do hereby certify the foregoing to be a full, true, and correct transcript of the complaint, summons, sheriff's return, answer, amended answer, exception of plaintiffs, findings of court, judgment, notice of appeal, and undertaking on ap-

peal, in the within and foregoing entitled cause, appearing on file, and of record in my office.

In witness whereof I have hereunto set my hand and affixed my official seal this second day of December, A. D. 1870.

[L. S.] ANGEVINE REYNOLDS, *Clerk.*

41 Service of a copy of foregoing transcript on appeal is admitted this day upon us, and we agree that the same (as amended) is a correct copy of the original papers therein referred to. The corrections amending the same as noted in said transcript, are as follows, on page 7, folios 20 and 21, read "salines" instead of "salaries;" on page 13, folio 37, commence prayer of answer with a paragraph, and capital; on page 13, folio 38, read "thirteen" instead of "eleven;" and "third" instead of "last" on page 22, folio 64; conclusions of law separate from findings of fact by paragraph.

Meriposa, December 10, 1870.

L. F. JONES,
J. B. CAMPBELL,
Attorneys for Respondent.

42 In the supreme court of the State of California, July term, A. D. 1871.

F. F. LOW, ET ALS., APPELLANTS
vs.
J. M. HUTCHINGS, RESPONDENT.

On appeal from the district court of the 13th judicial district in and for the county of Meriposa.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Crockett J., full bench concurring, to the effect that the judgment of the court below be reversed, with an order to the court below to enter judgment for the plaintiffs on the findings.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here, that the judgment of the district court of the 13th judicial district, in and for the county of Meriposa, in the above-entitled cause, be, and the same is hereby, reversed with costs, with an order to the court below to enter judgment for the plaintiffs on the findings.

Witness Hon. William T. Wallace, chief justice of the supreme court of the State of California, this 27th day of June, A. D. 1872.

[SEAL.] GRANT I. TAGGART,
Clerk of the Supreme Court, State of California.

43 UNITED STATES OF AMERICA, *ss:*

To F. F. Low, Henry W. Cleaveland, J. D. Whitney, William Ashburner, J. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen W. Clark, commissioners, &c greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be held at Washington in the District of Columbia, on the first Monday of December, A. D. 1871, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of California, wherein J. M. Hutchings is plaintiff in

error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Stephen J. Field, associate justice of the United States Supreme Court, this thirtieth day of September, A. D. 1871, and of the Independence of the United States the ninety-sixth.

[SEAL.]

44 (Indorsed:) United States. 2723. J. M. Hutchings, pl'ff in error, vs. F. F. Low & als., def't in error. Original citation. Filed June 24th, 1872. Grant I. Taggart, clerk.

STATE OF CALIFORNIA,
County of Mariposa, ss:

L. F. Jones, being duly sworn, deposes and says that he is of counsel for J. M. Hutchings, the within-named plaintiff in error, and as such counsel served the within citation on Alexander Deering, attorney for within-named defendants in error, on the 6th day of October, A. D. 1871, by exhibiting to him this original, and delivering to him a true and duly certified copy thereof, at said Mariposa County.

L. F. JONES.

Subscribed and sworn to before me on this 18th day of June, A. D. 1872.

[SEAL.] ANGEVINE REYNOLDS, *Clerk.*

13th jud'l dist. court, State of California, Mariposa County.

I hereby certify that I served the within citation on Galen W. Clark, on October 19th, 1871.

Dated October 24th, 1871.

H. McERLANE,
Sheriff of Mariposa County.
By S. A. KING, *Under.*

45 Know all men by these presents that James M. Hutchings, as principal, and Thomas Houseworth and John Horstman as sureties, are held and firmly bound unto F. F. Low, Henry W. Cleaveland, J. D. Whitney, William Ashburner, J. W. Raymond, E. S. Holden, Alexande Deering, Geo. W. Coulter, and Galen W. Clark, as they are the board of commissioners to manage the Yo-Semite Valley and the Mariposa Big-Tree Grove in and for the State of California, in the sum of five hundred ($500.00) dollars, lawful money of the United States of America, to be paid to the said Low, Cleaveland, Whitney, Ashburner, Raymond, Holden, Deering, Coulter, and Clark, commissioners, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-ninth day of September, A. D. one thousand eight hundred and seventy-one.

The condition of the above obligation is such, that whereas lately, at the July term of the supreme court of the State of California, in a suit depending in said court, between the above named obligees as plaintiffs, and the above named James M. Hutchings as def't, final judgment was rendered against the said James M. Hutchings, and the said

Hutchings having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit and a citation directed to the said obligees citing and admonishing them to be and appear at a supreme court of the United States to be holden at Washington on the first Monday of December next:

Now, therefore, if the said James M. Hutchings shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

J. M. HUTCHINGS. [SEAL.]
THOMAS HOUSEWORTH. [SEAL.]
JOHN HORSTMAN. [SEAL.]

Signed, sealed and delivered in the presence of—
M. G. COBB, as to J. M. Hutchings.
THO'S H. SIMMONS, as to Tho's Houseworth and John Horstman.

46 STATE OF CALIFORNIA,
County of Sacramento, ss:

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify the within and foregoing to be a full, true, and correct copy of the original "bond" on the "writ of error" in the before-mentioned case, as the same appears on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said supreme court this 27th day of June, A. D. 1872.

[SEAL.] GRANT I. TAGGART, *Clerk.*

47 (Indorsed:) 2723. James M. Hutchings and others vs. F. F. Low and others. Bond. Dated September, 1871.

The within bond is approved.

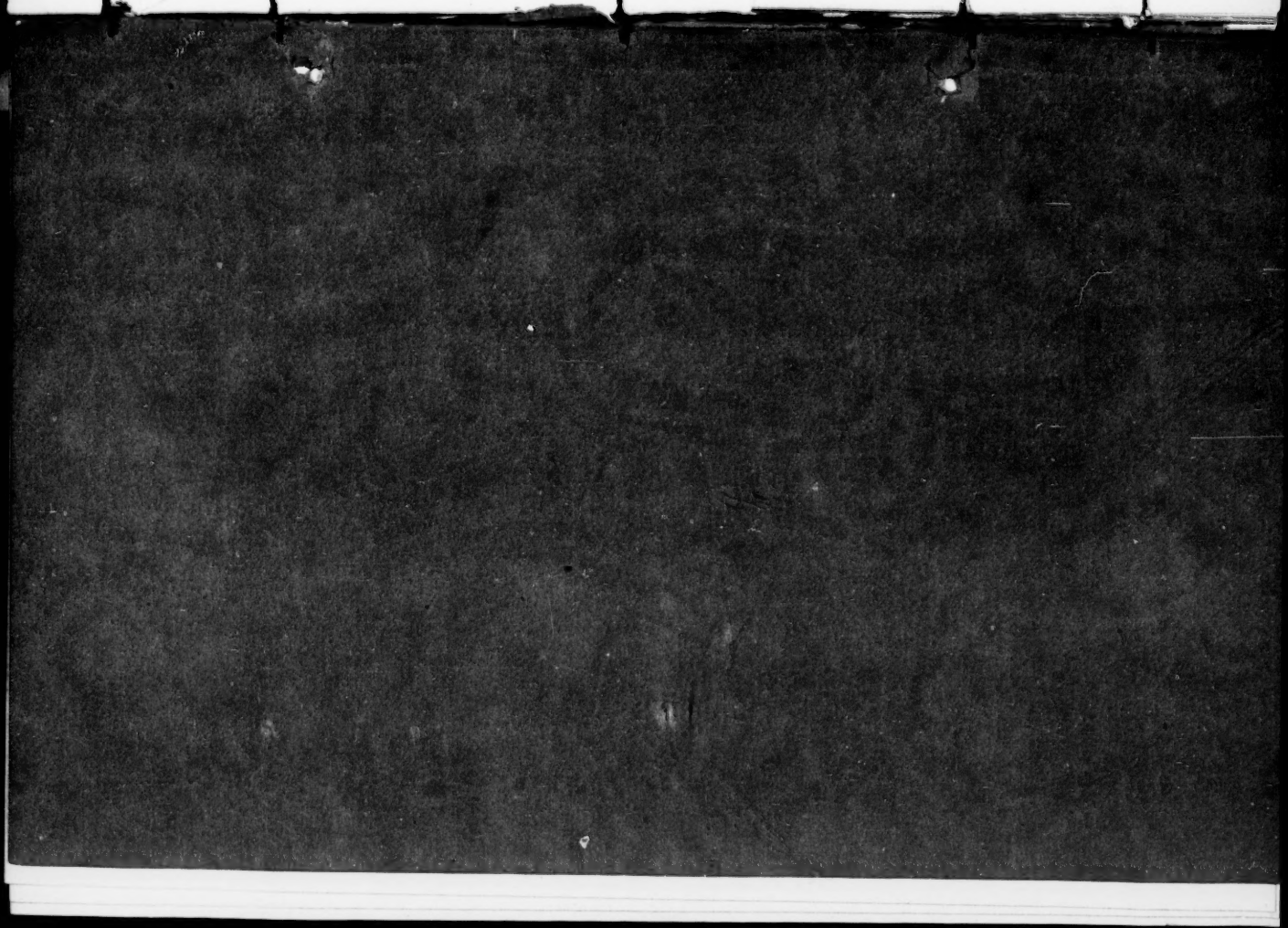
STEPHEN J. FIELD,
Associate Justice of U. S. Sup. Court.

SEP. 30, 1871.

Filed June 24th, 1872.

GRANT I. TAGGART, *Clerk.*

(Indorsement on cover:) No. 705. J. M. Hutchings, plaintiff in error, vs. F. F. Low, H. W. Cleveland, J. D. Whitney, William Ashburner, J. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen W. Clark, commissioners, &c. California sup. c't. Filed 12th of October, 1872.



Supreme Court of the United States.

DECEMBER TERM, 1872.

J. M. HUTCHINGS, Plaintiff in Error,
v.
F. F. LOW, GOVERNOR, *et al.*, Defendants in Error.
No. 435.

BRIEF FOR PLAINTIFF IN ERROR.

In June, 1864, Congress granted to the State of California the famous Yosemite Valley, to be held by the State in perpetual reservation as a pleasure-ground and place of general resort. Prior to this grant the plaintiff in error had settled upon a tract of land in the valley, being a portion of the grant, which he claimed under the pre-emption laws. The valley was unsurveyed, but the right of pre-emption, by express statute provisions, extends to unsurveyed lands, (Statutes at Large, vol. 12, page 410, sec. 7,) and Hutchings had complied with the terms of the pre-emption laws as far as it was possible to do prior to the survey. He had erected valuable buildings and fences, planted orchards and vineyards, and expended thousands of dollars in improvements, relying upon those laws for his protection, and confidently expecting to obtain a patent for his home by a *bona fide* compliance with their requirements. The simple question to be decided is, whether Congress, in granting the valley to the State of California, could divest the right of Hutchings under the pre-emption laws? In other words, had Hutchings such a vested right or interest, that Congress could not divest it by the grant of it to another party?

On this question a case directly in point, and perhaps the strongest that can be adduced in support of the right of pre-emption, is that of Lytle *v.* The State of Arkansas, (9 Howard, 333.) In this case, Cloyes, the pre-emptor, selected his claim under the act of Congress of May 29, 1830, authorizing and regulating pre-emptions. A later act, dated June 15, 1832, granted to the Territory of Arkansas one thousand acres, for a court-house and jail at Little Rock, including the tract claimed. Before this grant the pre-emption right of Cloyes had accrued under the act of 1830, and he had proved his right, and done everything he could do to perfect it. The court declared that "by this grant to Arkansas, Congress could not have intended to impair vested rights. The grants of the one thousand acres and of the other tracts must be so construed as not to interfere with the pre-emption of Cloyes." If this is not a case in point, it would not be easy to conceive one. If, by this grant to Arkansas, "Congress could not have intended to impair vested rights," why should such intention be attributed to Congress in the Yosemite grant? If the grant in the Arkansas case "must be so construed as not to interfere with the pre-emption of Cloyes," why should the Yosemite grant be so construed as to divest the pre-emption of Hutchings?

This case of Lytle *v.* The State of Arkansas is referred to in the case of Barnard's Heirs *v.* Ashley's Heirs, (18 Howard, 43.) The court says: "In Lytle's case we declared that the occupant was wrongfully deprived of his lawful rights of entry under the pre-emption laws, and the title set up under the selection of the Governor of Arkansas was decreed to Cloyes, the claimant: this court holding his claim to the land to have been a legal right by virtue of the occupancy and cultivation, subject to be defeated only by a failure to perform the conditions of making proof and tendering the purchase money." This, it will be seen, expressly deals with the right of pre-emption as "a legal right, by virtue of the occupancy and cultivation" of the pre-emptor, "subject to be defeated *only* by a failure to

perform the conditions of making proof and tendering the purchase money." But if so, does not the same principle apply in the case of Hutchings? The conditions of occupancy and cultivation he had complied with; and if he had gone no further, it was because the land was not yet surveyed, and there was no opportunity. He had done all he could do till the Government should untie his hands. And the court accordingly adds: "The claim of pre-emption is not that shadowy thing which by some it is considered to be. Until sanctioned by law it has no existence as a substantive right; but when covered by the law, it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it." If this is true of Cloyes, it must be equally true of Hutchings, and he can only lose his claim "by a failure to perform the conditions annexed to it," when those conditions shall be tendered for his performance, since the law is no respecter of persons. In giving this opinion the court well says: "The adventurous pioneer, who is found in advance of our settlements, encounters many hardships, and not unfrequently dangers, from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed one hundred and sixty acres. That this is the national policy, is shown by the course of legislation for many years." This perfectly expresses the spirit and policy of the pre-emption laws, as they have been understood by the whole country till quite recently. The pioneer settler has been treated as the favorite of the law. In further discussing the principles involved, the court, in the Arkansas case, says:

"It is a well-established principle, that when an individual, in the prosecution of a right, does everything which the law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him. In this case the pre-emption right of Cloyes having been proved, and an offer to pay the money for the land claimed by him, under the act of 1830, nothing more could be done by him, and nothing more could be required

of him under that act. And subsequently, when he paid the money to the receiver, under subsequent acts, the surveys being returned, he could do nothing more than offer to enter the land, which the register would not permit him to do. This claim of pre-emption stands before us in a light not less favorable than it would have stood if Cloyes or his representatives had been permitted by the land officers to do what, in this respect, was offered to be done."

In this language it is easy to see the substantial analogy between the case of Cloyes and that of Hutchings. Cloyes was held excused, on the ground that he had done everything in his power to perfect his claim. Hutchings did the same. Cloyes had gone further in complying with the conditions of title than Hutchings has done, but each went as far as he could, and neither was in default. Cloyes, the court says, stands in the same light as if he had been permitted by the land officers to do what was offered to be done; and so, it is respectfully submitted, Hutchings should stand in the same light as if he had offered to comply with other and further conditions, which were refused by the Government. The good faith of the Governmet is involved in both cases. There is neither justice nor law in the argument that the pre-emptor, after having made valuable improvements, and expended his money thereon, and complied with all the conditions of title which were within his power, may nevertheless be driven from his possession, his improvements confiscated, and the land conveyed to another, with notice of all the facts, who can hold it discharged from all the equities of the pre-emptor. The sanction of such a principle as law would be a flagrant insult to justice, and would go far to bring the law itself into contempt.

It is conceded on all hands, that if a pre-emptor, in addition to the other acts required of him, has *paid* for the land, he has acquired a vested right to it, and the Government is bound to give him the title; but this concession yields the whole case. If the Government is bound by its good faith to protect the settler at one stage of his claim, and as to one condition of title, it is bound to protect him at all stages, and as to every condition. The condition of final payment

is no more vital or sacred, either to the settler or the Government, than any of those which precede it. In the language already quoted, "it is fit that his enterprise should be rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed one hundred and sixty acres;" but of what value is this "privilege," if the settler holds it at the mere mercy or whim of the Government, which may cut it off at any moment? And what must be thought of a government which holds its individual citizens to perfect good faith, by compelling them to perform their engagements, and yet violates its own plighted faith to the settler, that he should have a home on its lands on specified conditions, with which he is ready and willing to comply? Nor is this question answered by saying that the settler has the option to abandon his pre-emption at any time, and that the Government, therefore, should be equally free. The option of the pre-emptor is very properly given by the law; for if he abandons his claim, the land, with the improvements made upon it, reverts to the Government, which loses nothing. The transaction has been likened to a contract for the sale of lands, in which the owner retains the title as security for the purchase money. On the other hand, if the settler, after spending his money and his time in improving his pre-emption, and making for himself a comfortable home, as in the present case, is driven away by the Government, without any default on his part, he loses all unjustly, and is utterly without remedy. Such a construction of the pre-emption laws could scarcely have been thought of by the men who enacted them, and cannot be defended on any valid grounds of law or justice.

I have dwelt on this particular case of Lytle *v.* The State of Arkansas, not only because the principles laid down in it settle the case under consideration in favor of Hutchings, but because it sustains the true land policy of the nation, as universally understood, till within a very recent period. It strikes the keynote of that policy, and appeals both to the common sense and the sense of justice of the people. As additional authorities, I refer to United States *v.* Fitz-

gerald, 15 Peters, 407; 18 Howard, 43; 9 Peters, 133; 10 Peters, 330; 2 Peters, 657; and Opinion of Attorney General Mason, in Opinions of the Attorneys General of the United States, Doc. 55, pages 1795–'96.

The counsel for the defendant in error cites in his favor the case of Whitney *v.* Frisbie, (9 Wallace, 187;) and this is the only authority of any Federal court which can be cited in favor of the new doctrine now set up as to the rights of settlers under the pre-emption laws. I do not regard it as conclusive against the right of Hutchings in the present case. It is directly in the face of the strong and explicit language of the court in the case of Lytle *v.* The State of Arkansas, of which, however, it takes no notice. It is against the current of authorities on the question in the Federal courts, and against the whole spirit and policy of our land laws. It refers to the different sections of the pre-emption act of 1841, but takes no notice of the judicial constructions of the act to which I have referred, in favor of the rights of the settler under that act. It cites in support of the points affirmed sundry opinions of Attorneys General and decisions of State courts, which at best are not binding and conclusive authorities in this court; while it fails to discuss or scarcely to refer to the strong cases decided in the Federal courts in favor of an opposite interpretation of the right of pre-emption, and especially the case of Lytle *v.* The State of Arkansas.

The facts of the case of Whitney *v.* Frisbie are very peculiar also; and I cannot, therefore, hold the claim of Hutchings as conclusively settled adversely by that single case. On the contrary, I submit that the legal right is in his favor, on a fair construction of the act of Congress of 1841 and the authorities I have cited, and that the court below erred in its judgment against the plaintiff in error; which judgment he prays may be reversed.

GEO. W. JULIAN,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

J. M. HUTCHINGS, PLAINTIFF IN ERROR,

vs.

F. F. LOW, GOVERNOR, ET AL., DEFENDANTS IN ERROR.

Brief for Defendants in Error.

The facts of this case are simply these:

Congress granted, in June, 1864, to the State of California a tract of unsurveyed public land known as the Yosemite Valley, to be held and improved by the state as a public reservation.

Prior to this grant the defendant, Hutchings, (plaintiff in error,) settled upon a tract in the valley embracing the premises in controversy, intending to purchase under the pre-emption laws.

The question presented to the court is, whether a settlement upon the public domain confers such legal or equitable rights upon the settler, under the Constitution and laws of the United States, as to prevent Congress from disposing of the land in its discretion to any one for any purpose.

If this question were an original one, and had not been already definitely and finally settled by this court, it might be thought necessary to discuss it on behalf of the defen-

dants in error, but a reference to the case of Frisbie vs. Whitney (9 Wallace, 187) disposes of the question upon authority, and it is superfluous to add anything by way of argument to the views advanced in that case, and which have controlled the supreme courts of the different states since that opinion was delivered. That case has been followed in California by the cases of Hutton vs. Frisbie, (37 Cal., 475,) and by the cases of Law vs. Hutchings, Marquez vs. Frisbie, Faustin vs. Frisbie, Luhr vs. Frisbie, decided at the last October term of that court, but not yet reported.

The rule may be regarded, then, as established that the settlement by a pre-emptioner upon the public lands after survey, and a compliance by him with all the requisite formalities prior to payment, vests no right which restricts, to any extent whatever, the absolute power of Congress to dispose of the land by sale or donation.

It seems quite clear that any other rule would result often in serious embarrassment to the government. In this case the land had not been surveyed, and the claim of plaintiff in error has therefore even less color of equity.

The legislature having accepted the grant made to the state the valley became effectually dedicated to the public according to the terms of the grant. After this had been done the legislature, in 1867–8, passed an act which, for the purposes of this case, may be admitted to have gone through the forms of legislation.

It is too clear to require argument that the State of California, having accepted a grant of the Yosemite Valley for the use of the public, under the terms of the act of Congress, would have no power to alienate it without the assent of Congress.

The state has not attempted to exercise any such power. The act of 1868 provides, in section 2, as follows:

Section 2. "This act shall take effect and be in force from and after its ratification by Congress." No such event has yet occurred. Congress has thus far refused

to ratify this ~~provision~~ reversion of the trust accepted by the state. The act of the legislature of the state is the same as though it had not gone through the forms of legislation. It has no existence as yet, nor any practical operation by its very terms, and the rights of the defendants in error are as perfect as before its introduction or passage.

The memorial or resolutions adopted by the legislature are as destitute of any legal effect as the attempted enactment of the same body, and are altogether immaterial to the present controversy.

The plaintiff in error has shown no error in the judgment, and it is respectfully submitted that the judgment ought to be affirmed.

EDMOND L. GOOLD,
Counsel for Defendants in Error.